

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FIRSTLINE NATIONAL INSURANCE
COMPANY,

Plaintiff,

v.

SECRET GARDEN LANDSCAPING,

Defendant.

HON. JEROME B. SIMANDLE

Civil No. 07-2591 (JBS/JS)

ORDER

This matter is presently before the Court on Plaintiff Firstline National Insurance Company's motion for default judgment and motion to lift stay [Docket Item 25] and Movant HSJ Properties, LLC's motion to intervene pursuant to Rule 24(a)(2), Fed. R. Civ. P. [Docket Item 27].

On June 4, 2007, Firstline brought suit in this Court seeking a judgment declaring that Plaintiff had no duty to defend or indemnify Defendant Secret Garden Landscaping in a state court action brought by HSJ against Secret Garden. On August 5, 2009, the Court stayed this action due to Defendant Secret Garden Landscaping's pending bankruptcy proceedings. Firstline subsequently obtained leave from the Bankruptcy Court to proceed with the present action. (Pl. Exh C.) The Court will consequently lift the stay.

HSJ has obtained a judgment against Secret Garden in the underlying state court action and seeks to intervene in this case. Neither Firstline nor Secret Garden oppose HSJ's request to intervene. The Court finds that HSJ has made a timely

application to intervene, that HSJ has a real interest in the present litigation -- HSJ seeks to recover its judgment against both Defendant Secret Garden and Secret Garden's insurer, Plaintiff Firstline -- and that interest may be impaired by the Court's determination of the parties' obligations under the insurance contract at issue here. In addition, the Court finds that HSJ's interests are not represented by any existing party in this litigation. Therefore, the Court will grant HSJ's motion to intervene. See Mountain Top Condominium Ass'n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361, 365-66 (3d Cir. 1995) (setting out the requirements for intervention under Rule 24(a)(2)).

Finally, Firstline has withdrawn its motion for default judgment.

WHEREFORE IT IS this 30th day of **March, 2010** hereby

ORDERED that Plaintiff Firstline's motion to lift the stay shall be, and hereby is, **GRANTED**, and its motion for entry of default judgment shall be **DISMISSED WITHOUT PREJUDICE** to Plaintiff renewing such a motion at a later day; and it is further

ORDERED that Movant HSJ's motion to intervene shall be, and hereby is, **GRANTED**.

s/ Jerome B. Simandle

JEROME B. SIMANDLE
U.S. District Judge